



DEPARTMENT OF DEFENSE

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Office of the Secretary

[Docket ID: DoD-2012-OS-0035]

32 CFR Part 319

Privacy Act; Implementation

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: Defense Intelligence Agency (DIA) is proposing to update the DIA Privacy Act Program by adding an exemption to accurately describe the basis for exempting the records in the system of records notice LDIA 0660, Security and Counterintelligence Records. This direct final rule makes nonsubstantive changes to the Defense Intelligence Agency (DIA) Privacy Program rules. These changes will allow the Department to add an exemption rule to the DIA Privacy Program rules that will exempt applicable Department records and/or material from certain portions of the Privacy Act. This will improve the efficiency and effectiveness of DoD's program by preserving the exempt status of the applicable records and/or material when the purposes underlying the exemption(s) are valid and necessary. This rule is being published as a direct final rule as the Department of Defense does not expect to

receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule is effective on [INSERT DATE 70 DAYS AFTER THE DATE OF PUBLICATION IN FEDERAL REGISTER] unless comments are received that would result in a contrary determination. Comments will be accepted on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN FEDERAL REGISTER]. If DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the Federal Register.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal Rulemaking Portal:
<http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name and docket number for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received

without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202)231-1193.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Programs. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the Federal Register. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review".

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C Chapter 6).

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it

is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 95-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35).

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act".

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism".

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 319

Privacy.

Accordingly, 32 CFR part 319 is amended as follows:

PART 319- DEFENSE INTELLIGENCE AGENCY PRIVACY PROGRAM

1. The authority citation for 32 CFR Part 319.13 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 319.13 is amended by revising paragraph (e) to read as follows:

§ 319.13 Specific exemptions.

* * * * *

(e) *System identifier and name:* LDIA 0660, Security and Counterintelligence Files.

(1) *Exemption:* Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(k) (2), (k) (5) and (k) (6) may be exempt from the following subsections of 5 U.S.C. 552a: (c) (3), (d), (e) (1), (e) (4) (G), (e) (4) (H), and (e) (4) (I).

(2) *Authority:* 5 U.S.C. 552a(k) (2), (k) (5) and (k) (6).

(3) *Reasons:* The reasons for asserting these exemptions are to ensure the integrity of the adjudication process used by

the Agency to determine the suitability, eligibility or qualification for Federal service with the Agency and to make determinations concerning the questions of access to classified materials and activities. The proper execution of this function requires that the Agency have the ability to obtain candid and necessary information in order to fully develop or resolve pertinent information developed in the process. Potential sources, out of fear or retaliation, exposure or other action, may be unwilling to provide needed information or may not be sufficiently frank to be a value in personnel screening, thereby seriously interfering with the proper conduct and adjudication of such matters; and protects information used for medical, psychological evaluations, security questionnaires and polygraph testing.

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DATED: February 28, 2012.

Patricia L. Toppings

OSD Federal Register Liaison Officer

Department of Defense

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